



Department of Energy

No. 96-3

Date: September 13, 1996

# FINANCIAL ASSISTANCE LETTER

## AUTHORITY

This Financial Assistance Letter (FAL) is issued by the Procurement Executive pursuant to a delegation from the Secretary.

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- I. **Purpose.** This letter provides updated guidance regarding the Department of the Interior and Related Agencies Appropriations Act requirement to apply, in some circumstances, the Buy American Act (41 U.S.C. 101-106) to financial assistance and requires certain notifications to, and assurances by, financial assistance recipients pertaining to the Buy American Act. This Financial Assistance Letter cancels and supersedes Financial Assistance Letter 93-1R, dated March 31, 1993.
- II. **Background.** The last three Appropriation Acts for the Department of Interior and Related Agencies have applied the Buy American Act to appropriations and transfers for financial assistance programs receiving funding under the Appropriations Act. The current fiscal year's Appropriations Act, Public Law 104-134, contains this provision at Section 307. Section 307 does not require that **all** purchases made by financial assistance recipients of funds appropriated or transferred under the Appropriations Act be of American-made products. Rather, when read in conjunction with the terms of the Buy American Act, it says that if the circumstances described in the Buy American Act apply, the recipient agrees to follow the Buy American Act restrictions. The terms "public use" and "public works," as used in the Buy American Act, describe situations where there is a physical end product specifically acquired for the public's use. These terms anticipate that title to property, whether personal property or an improvement to real property, but not intellectual property, will vest in the Government.

Section 307 applies only to funds appropriated for certain programs in Public Law 104-134. The programs listed in that Act are:

Fossil Energy Research and Development  
Alternative Fuels Production  
Naval Petroleum and Oil Shale Reserves  
Energy Conservation  
Economic Regulatory Administration  
Office of Hearings and Appeals

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Emergency Preparedness  
Strategic Petroleum Reserve  
Strategic Petroleum Reserve Petroleum Account  
Clean Coal Technology  
Energy Information Administration

Additionally, Section 307 requires that recipients agree to comply with the Act (see 307(a)) and that recipients be advised that it is the sense of Congress that only American-made products and equipment should be purchased (see 307(b)(2)).

The text of Section 307 is as follows:

### SEC. 307.

*(a) COMPLIANCE WITH BUY AMERICAN ACT.*--None of the funds made available in this Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c; popularly known as the "Buy American Act").

*(b) SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.*--

*(1) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.*-- In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

*(2) NOTICE TO RECIPIENTS OF ASSISTANCE.*-- In providing financial assistance using funds made available in this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by the Congress.

*(c) PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA.*-- If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures

described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

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- III. **Guidance.** To comply with Sections 307(a) and (b)(2), the following term should be included in awards made under programs listed in Pub. L.104-134:

"In accepting this award, the recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The recipient should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it.

In compliance with Section 307 (b)(2) of Public Law 104-134, the recipient is hereby notified that it is the sense of the Congress of the United States that only American-made equipment and products should be purchased with financial assistance provided under this award."

- IV. **Effective Date.** This FAL is effective upon the date of issue shown.
- V. **Expiration Date.** This FAL is effective until canceled.

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August , 1996  
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### Concurrence:

HR-51	HR-51	HR-51	HR-5	GC-61
Hmitchell	CSeckinger	LTillman	RHopf	LFullerton
7/23/96	8/2 /96/	/ /	/ /	8 /2 /96

### HR-51 Internal Copies

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note: (earlier draft and concurrence by GC-61 used the proposed number of FAL96-04)  
Revised: per edits by Hopf, HR-5 9/5/96.